United States Court of Appeals

For the

District of Columbia Circuit

FILED MAY 13 1949

Joseph W. Stewart
Clerk

UNITED STATES COURT OF APPEALS

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 9827, April Term, 1949.

Smoot Sand & Gravel Corporaton,
Petitioner,

v.

District of Columbia,
Respondent.

Before Edgerton, Prettyman and Proctor, JJ.

ORDER

On consideration of respondent's motion to tax costs against petitioner and of the objections thereto, the Court is of opinion that petitioner caused to be included in the

transcript of record and in the printed joint appendix the following matter which was wholly unnecessary in connection with petitioner's points on review in this case:—

1. Petitioner's Exhibit 15, memorandum re a conference with board of Tax Appeals on July 21, 1938 (R. 509-512 incl; App. 27-32 incl)

2. Petitioner's motion to place certain issues on the trial calendar and certain issues on the reserve calendar and memorandum relating to Northwest Airlines case and memorandum in opposition to the motion (R. 23-37, incl.)

3. Briefs for petitioner and respondent and reply brief (R. 44-131, incl.)

4. Argument portion of petitioner's motion for correction of Board's findings and argument portion of respondent's memorandum in opposition to the motion (R. 142-158, incl. App. 58-74, incl) (R. 163-165, incl. App. 78-80, incl)

5. Briefs for petitioner and respondent (R. 168-186, incl. App. 96-116, incl)

6. Argument portion of motion for reconsideration (R. 188-199, incl. App. 84-95, incl.)

Most of the above-described matter consists of briefs filed in the lower tribunal, which form no part of the record, and which should not have been included in the transcript of record. See *Zadig* v. *Baldwin* 166 U. S. 485, 488; *Harding* v. *Illinois,* 196 U. S. 78, 84; *Maryland Casualty Company* v. *Jones,* 279 U. S. 792, 796. In the circumstances the petitioner will not be allowed the cost of preparing 158

pages of the transcript of record or for printing 58 pages of the joint appendix, and

IT IS SO ORDERED.

Dated May 13, 1949. Per curiam.

A true Copy,

Test: /s/ Joseph W. Stewart
Clerk of the United States Court of Appeals
(SEAL) for the District of Columbia Circuit.